

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF MULTNOMAH
3

4 THE ESTATE OF MICHELLE)
SCHWARZ, deceased, by and)
5 through her Personal)
Representative, RICHARD)
6 SCHWARZ,)
)
7 Plaintiff,) Circuit Court
) Case No. 0002-01376
8 vs.)
)
9 PHILIP MORRIS INCORPORATED,) Appellate Case
a foreign corporation, and) No. A118589
10 ROTH'S I.G.A. FOODLINER,)
INCORPORATED, an Oregon)
11 corporation,)
Defendant.)

12
TRANSCRIPT OF PROCEEDINGS
13 Volume 38-B
11:15 a.m. - 3:00 p.m.

14
15 BE IT REMEMBERED, That the above-entitled
16 matter came on regularly for Jury Trial and was
17 heard before the Honorable Roosevelt Robinson, Judge
18 of the Circuit Court of the County of Multnomah,
19 State of Oregon, commencing at 11:15 a.m., Tuesday,
20 March 5, 2002.

21 * * *
22 Katie Bradford, CSR 90-0148
Official Court Reporter
23 210-A Multnomah County Courthouse
1021 SW Fourth Avenue
24 Portland, Oregon 97204
(503) 988-3549
25

1 APPEARANCES:

2 Mr. D. Lawrence Wobbrock, Attorney at Law,
3 Mr. Charles S. Tauman, Attorney at Law,
4 Mr. Richard A. Lane, Attorney at Law,
5 Appearing on behalf of the Plaintiff;

6 Mr. James L. Dumas, Attorney at Law,
7 Mr. John W. Phillips, Attorney at Law,
8 Appearing on behalf of Defendant
9 Philip Morris, Incorporated and Defendant
10 Roths I.G.A. Foodliner, Incorporated.

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1 (Tuesday, March 5, 2002, 11:15 a.m.)
2 P R O C E E D I N G S
3 (Court Reporter Charlotte A. Powers
4 reported Volume 38-A.)
5 (Whereupon, the following proceedings were
6 held in open court, out of the presence of the
7 jury:)
8 THE CLERK: Please remain seated.
9 The Court is in session.
10 THE COURT: Are there any legal matters
11 for the Court before we bring the jury in?
12 MR. WOBBROCK: None, Your Honor.
13 THE COURT: Thank you.
14 Bring the jury, please.
15 (The following proceedings were held in
16 open court, the jury being present at 11:17 a.m.:)
17 THE COURT: All right. Mr. Dumas, you may
18 proceed with your questions.
19 MR. DUMAS: Thank you, Your Honor.
20
21 NANCY LUND,
22 Was thereupon called as a witness on behalf of the
23 Defendant, and, having been first duly sworn, was
24 examined and testified as follows:
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FURTHER DIRECT EXAMINATION

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BY MR. DUMAS:

Q Ms. Lund, I just have a few more questions of you.

First, go back to an issue that you talked about some yesterday of Philip Morris' entire marketing budget -- by Philip Morris, I mean the defendant in this case, Philip Morris USA, the tobacco company -- of Philip Morris' entire marketing budget, approximately what percent is devoted to advertising?

A Ah, about two percent or less.

Q What comprises the other 98 percent? And if you use technical terms, please define them, but go ahead.

A Price promotions.

Q Okay. Run down the list and we're going to go back to them.

A Price promotions; product -- free product promotions; direct mailings; the events sponsorship, like the Indy car racing sponsorship I talked about; bar night programs; continuity programs and sweepstakes programs. I think those are most of the categories.

Q Okay. So that comprises 98 percent of

1 Philip Morris' marketing budget?

2 A That's correct.

3 Q Briefly, what is a sweepstakes?

4 A A sweepstakes is if you're an adult
5 smoker, you can win a trip to go to a ranch or win a
6 trip to go to racing school.

7 Q Continuity?

8 A If you save the sides of the packs of some
9 of our cigarettes, you can send them in. And if you
10 are a smoker 21 years of age or older and send us your
11 government-issued identification, you can get in
12 exchange maybe bags or jackets or barbecue stuff.

13 Q Without cigarette logos on them?

14 A No logos on them.

15 Q Philip Morris' name on any of them?

16 A No.

17 Q The next one is bar night. What's that?

18 A Bar night is where we would go into a bar
19 or a club where the admission is restricted to those
20 who are of the age of 21, and we would do some
21 sweepstakes promotions, like offer people a chance to
22 sign up if they're a smoker and they want to go to the
23 ranch. That kind of thing.

24 Q Event sponsorships. What's that? What is
25 the thing that Philip Morris does in sponsorship?

1 A That's the Marlboro Team Penske that I
2 talked about, Indy team racing.

3 Q Paying for the race car. That's part of
4 the marketing budget?

5 A That's correct.

6 Q The next category, direct mail?

7 A We send letters to people and sometimes we
8 have coupons in the letters, or, you know, sometimes
9 just, you know, coupons or letters or mailings.

10 Q Product promotion?

11 A Product promotion is when we would offer
12 "Buy three packs of Marlboro, get two free packs," in
13 what looks like a half a carton of cigarettes.

14 Q And price discounts?

15 A That would be where you can save 50 cents
16 on a pack of our cigarettes basic or Marlboro or
17 whatever is being promoted.

18 Q So that's where 98 percent of the
19 marketing budget goes?

20 A That's correct.

21 Q I want to shift gears again now. We heard
22 and talked a little bit about Web site information.
23 Does Philip Morris have Web site information on health
24 issues for smokers?

25 A Yes, it does.

1 Q When was the Web site started?

2 A I believe it was started some time in
3 1999.

4 Q Why did Philip Morris create a Web site
5 regarding health issues for smokers?

6 A As part of our mission statement, one of
7 the things that we talked about was having a more open
8 dialogue with the public about issues that were of
9 concern to them.

10 Q And was information concerning the
11 Web site mailed to your customers?

12 A Yes. We also did a mailing to everybody
13 on our adult smoker database.

14 Q Do you also have a 1-800 number?

15 A That's correct.

16 Q And did you disseminate information at
17 retail sites concerning the Web site?

18 A Yes, we have pamphlets.

19 Q Is Philip Morris' Web site address on all
20 your advertisements?

21 A Yes, it is.

22 Q Why?

23 A Why? Because we want people who want that
24 information about our products to be able to find it,
25 so we post the Web site address on our advertisements.

1 Q In a nutshell, what does Philip Morris'
2 Web site tell smokers about the relationship between
3 smoking and disease?

4 A It says, "Cigarette smoking causes
5 disease."

6 Q What does the Web site tell smokers about
7 the relationship between smoking and addiction?

8 A It says, "Smoking is addictive."

9 Q Does the Web site provide information to
10 smokers on how to quit?

11 A It provides information about quitting,
12 and I think it provides links to other sites which can
13 provide more information about quitting.

14 Q What does the Philip Morris Web site tell
15 smokers about the relationship between FTC tar and
16 nicotine numbers and the amount of tar and nicotine
17 they may actually get by smoking a cigarette?

18 A It tells them that the way a person smokes
19 will vary the amount of tar and nicotine he gets or
20 she gets.

21 Q Ms. Lund, yesterday you testified that you
22 are the person at Philip Morris who is primarily
23 responsible for Philip Morris' advertising and
24 marketing; is that correct?

25 A That's correct.

1 Q Do you believe, since you've had that
2 responsibility, Philip Morris has acted responsibly in
3 marketing its products?

4 A Yes, I do.

5 Q Can you tell the ladies and gentlemen of
6 the jury why.

7 A Well, I think we have acted responsibly
8 because we have followed the rules that guide our
9 industry. I think we are really very careful to
10 follow the rules that guide our industry. I think we
11 do it because we believe it's the right thing to do.
12 We're not trying to sell cigarettes to kids, and
13 that's what responsible people do.

14 Q Ms. Lund, Philip Morris advertises low-tar
15 cigarettes, correct?

16 A That's correct.

17 Q Philip Morris advertises low-tar
18 cigarettes under your responsibility, correct?

19 A That's correct.

20 Q With regard to Philip Morris'
21 advertisements for low-tar cigarettes, Ms. Lund, do
22 you believe your ads concerning low-tar cigarettes are
23 deceptive or misreading to your customers and the
24 American people?

25 A I don't believe they are.

1 Q Do you believe your ads concerning low-tar
2 cigarettes are fraudulent?

3 A I don't believe they are, no.

4 Q Why not?

5 A Because I think what we place in our ads
6 is factual.

7 MR. DUMAS: Thank you very much, Ms. Lund,
8 that's all the questions I have.

9 Your Honor, I'd move into evidence defense
10 exhibits for demonstrative purposes, 2444, the "We
11 Card You" smoking-prevention materials at this time.

12 MR. TAUMAN: Your Honor, could we defer
13 that for just a minute?

14 THE COURT: All right. We will defer
15 that, counsel.

16 Thank you, Mr. Dumas.

17 And cross-examination now from the
18 plaintiff.

19 MR. WOBBROCK: Thank you, Your Honor.

20 MR. DUMAS: Excuse me, Your Honor, before
21 Mr. Wobbrock begins, I'll also move into evidence
22 2441, 2442 and 2443, portions of Philip Morris' Web
23 site concerning the three topics I just addressed
24 with Ms. Lund.

25 MR. WOBBROCK: I haven't looked at those,

1 Judge, and if we could do it during the break.
2 MR. DUMAS: That's fine.
3 THE COURT: Very well. Proceed, counsel.
4 MR. WOBBROCK: Thank you, Your Honor.
5

CROSS-EXAMINATION

6
7
8 BY MR. WOBBROCK:
9 Q Ms. Lund, as we pointed out to the jury
10 before, this is you here one notch down from the
11 president, correct?
12 A That's correct.
13 Q You've had that position since -- have you
14 had that position since 1985?
15 A No, I have not.
16 Q How long have you been in that position?
17 A I've been in this position for -- I guess
18 about three years now.
19 Q And how much further down were you, let's
20 say, eight years ago?
21 A Ah, eight years ago, I was one level down
22 I would say.
23 Q Down in this area?
24 A Oh, I'm sorry, may I explain the chart?
25 These are all the same level.

1 Q You're one notch down below this?
2 A All these people are at the same level.
3 Q Eight years ago you were not on the chart?
4 A Oh, I beg your pardon. Yes, I agree with
5 that.
6 Q Eight years ago, you were not on this
7 chart?
8 A That's correct.
9 Q Okay. And then in the last three years or
10 so you moved up to be in this --
11 A Actually, I moved up to the chart a little
12 before I became a senior vice president. When I was
13 group vice president, or at least for some portion of
14 that I was also a member of the senior team, so I
15 didn't have that title but I was on that chart.
16 Q Okay. And when did that happen?
17 A That happened about -- about four or five
18 years ago maybe.
19 Q So about 1987, '97?
20 A About '97, I think, if I have my dates
21 right.
22 Q And in 1994, eight years ago -- you call
23 this the inner circle?
24 A No.
25 Q No?

1 A We call it the senior team.
2 Q Senior team. And what's the team right
3 below that, when you were one below that?
4 A We don't have a name for them.
5 Q Okay. That would be pretty high up in the
6 corporation, though, would it not?
7 A Yes, it would.
8 Q And when you are were one below this, did
9 you have occasion to talk to the president?
10 A Yes, I would.
11 Q And that was -- eight years ago that was
12 Bill Campbell, was it not?
13 A Eight years ago that was --
14 Q 1994.
15 A I don't know if it was Bill Campbell or
16 Jim Morgan. It was one of those two.
17 Q We saw Bill Campbell go to the Waxman
18 hearings and give a statement to Ron Wyden and the
19 committee, and that was 1994, April 14th. And he
20 represented that he was either president or CEO, so he
21 would have been in this position at that time,
22 correct?
23 A I accept that, yes.
24 Q And you had occasion to talk to him when
25 he was in that position?

1 A Yes, I did.
2 Q How often would you meet with him?
3 A Well, I would say on a regular basis. I
4 don't know whether I can say once a month or -- I
5 would say on a regular basis I got to speak to him.
6 Q And that's because your position was one
7 of importance and responsibility in the corporation.
8 That's why you would talk to the president?
9 A I think that's right, yes.
10 Q Were you where that he was going to the
11 Waxman hearing --
12 A Ah --
13 Q -- before he went?
14 A I don't recall if I was or I wasn't. I
15 probably was aware.
16 Q And did you see that as a potential
17 marketing opportunity?
18 A No, I don't. I would remember that.
19 Q Uh-huh. Were you asked to have any input
20 to what he was going to say to that committee?
21 A No, I was not.
22 Q Were you aware of what he was going to say
23 before he said it?
24 A No, I was not.
25 Q Were you aware of what he said after he

1 said it?

2 A I have seen portions of what he said. I
3 am not aware of everything that he said.

4 Q Are you aware that he testified before the
5 Waxman committee, in particular when Representative
6 Ron Wyden asked him if he believed that cigarette
7 smoking was addictive? He said he did not believe it
8 was addictive. Are you aware of that?

9 A I believe he did say that.

10 Q And you're also aware that he said in
11 response to Representative Waxman's questions and
12 others that he didn't believe cigarette smoking caused
13 disease, particularly lung cancer?

14 A Yeah. I'm not sure of that one, but I
15 accept it if you say that's what he said.

16 Q The jury has seen it at least twice, maybe
17 more. I can't remember at this point, we've been here
18 a month. But whatever they recall is what governs
19 here.

20 A Okay.

21 Q Were you aware that he said those things
22 under oath?

23 A Yes. I was aware that he said those under
24 oath.

25 Q Did it distress you that he said those

1 things under oath? That he denied that it was
2 addictive and that it caused lung cancer? Under oath
3 did he said that?

4 A Well, it didn't distress me. I think that
5 Mr. Campbell represented what his point of view was.
6 If he said it under oath, it must have been what he
7 meant.

8 Q You understood that he was speaking on
9 behalf, at that time, of Philip Morris?

10 A Well, I don't know that; but I guess I
11 could accept that. I know that he was speaking as
12 Mr. Campbell. And I don't know if he was asked for
13 his personal viewpoint or his company's viewpoint, and
14 I am not sure exactly how he expressed it.

15 Q Well, just assume that the jury has seen
16 that he testified under oath on behalf of Philip
17 Morris that cigarettes were not addictive and didn't
18 cause lung cancer. And that was under oath before the
19 United States Congress. Would that distress you?

20 A No, it wouldn't. I mean, I think I
21 mentioned already that the company's position was
22 rather defensive on these points in my earlier
23 testimony.

24 Q You thought it was defensible?

25 A I think it was defensible because I think

1 it was a technical definition of causation and
2 addiction that he was relying on.

3 Q Uh-huh. And do you think your company --
4 let me see if I have something here to show you.

5 Do you think your company ever made a
6 promise to the American people not to rely upon
7 technical definitions, to defend themselves when
8 people asked them the truth?

9 A I beg your pardon?

10 Q Do you think your company ever made a
11 promise to the American people that when asked the
12 truth about a subject, they wouldn't rely upon
13 technical definitions?

14 A I don't know if we made such a statement.

15 Q Okay. If they did, do you think what
16 Mr. Campbell did was proper?

17 A Well, we're getting into an area where I
18 am not sure how to answer. If we did and he did, I am
19 not sure how he represented his view, whether he
20 believed it was a technical definition or legal and
21 whether we made such a promise. So I am not sure how
22 to answer you, Mr. Wobbrock.

23 Q So if you qualify it about six different
24 ways, you think you can persuade yourself and this
25 jury that what he did was okay?

1 A I think I already said that I think what
2 he did was okay. That was the company's view and I
3 explained why.

4 Q Let me ask you if you are aware of this
5 document. This is Exhibit 6. This is called The
6 Frank Statement. And it says here, "We accept an
7 interest in people's health as a basic responsibility,
8 paramount to every other consideration in our
9 business."

10 Do you think if he made that statement in
11 1994, with the qualifications that you've put upon it,
12 that it's consistent with that promise?

13 A Well, I think we do have and accept an
14 interest in people's health as a basic responsibility
15 in marketing a dangerous product.

16 Q Let's get right to the nub of that,
17 though. A basic responsibility?

18 A Right.

19 Q But paramount to all others?

20 A Well, I think it is a dangerous product.
21 And I think our first responsibility is to do what we
22 can, is to make the product as with best we know how
23 to do it, and to market it responsibly.

24 Q So you know that it kills people?

25 A Yes, we do.

1 Q Do you know who George Weissman was? He
2 was in your department before you got there probably.
3 A George Weissman.
4 Q Do you know who he was?
5 A Yes, I do.
6 Q Did you ever work with him?
7 A No, I did not.
8 Q He was gone by the time you got there?
9 A Well, I shouldn't say that. He might have
10 been a president or I'm not sure what title, but I did
11 know him when I was there.
12 Q You knew him?
13 A Yes, I did.
14 Q Let me ask you if you ever talked this
15 over with him. "'The cigarette industry would stop
16 business tomorrow if it thought its product was
17 harming smokers,' according to George Weissman, vice
18 president of Philip Morris Company in a speech in
19 Chicago Tuesday."
20 Have you ever talked that over with him?
21 A I have not.
22 Q Did he ever tell you that?
23 A He did not.
24 Q In fact, tomorrow has come and gone. You
25 know cigarettes kill people and you're still in

1 business?

2 A Ah, we are in business to make our
3 cigarette products. We know that they're dangerous
4 and some people can contract diseases. And we are
5 making them and selling them as responsibly as we know
6 how to sell them.

7 Q So Mr. Weissman was in error when he said
8 you would stop business tomorrow if you thought your
9 product was harming smokers, wasn't he?

10 A I don't know why Mr. Weissman said that,
11 and I can't comment on it.

12 Q He tells us here why he said it. "He
13 blames the cancer problem on medical propaganda by a
14 small number of doctors and a large number of
15 magazines and newspapers." Did you agree with that?

16 A I don't know -- I don't know why he said
17 what he said, and this is what he said, and I can't
18 comment on it.

19 Q I'm not asking you that, except if you
20 agree with this statement: Do you blame the cancer
21 problem on medical propaganda by a small number of
22 doctors and a large number magazines and newspapers?

23 A I don't know what the cancer problem means
24 and so forth, but a cancer problem doesn't, in my
25 opinion, have anything to do with propaganda. There's

1 a cancer problem.

2 Q You don't know what the cancer problem
3 means, though?

4 A Well, I think that the cancer problem is a
5 problem of disease. I don't know about the rest of
6 the statement.

7 Q Were you aware that when Mr. Campbell
8 spoke to Congress and told them under oath that he
9 didn't believe smoking caused lung cancer, that the
10 tobacco industry was the only organization amongst
11 those listed on the image, Exhibit 473, that believed
12 that?

13 A No, I was not aware of that.

14 Q Knowing that -- is this the first time
15 you've become aware of this today, right now?

16 A Well, I am certainly aware of a number of
17 these folks, but I don't know all of them.

18 Q Okay. But were you aware until right now
19 that back in 1994, your industry was the only
20 industry, the only entity, the only organization that
21 believed that smoking didn't cause disease?

22 A I don't know in 1994. And I don't know
23 now if we're the only organization that takes certain
24 views on things.

25 Q I see.

1 A Sorry.

2 Q Well, assuming this to be true, do you
3 believe Mr. Campbell did the right thing under oath
4 before Congress in 1994?

5 A Well, I think I answered that. I think
6 that he was under oath and he testified based on what
7 he believed to be the facts, and I don't know how to
8 second guess him on that. I can tell you what we are
9 doing today and what we have done since that time, and
10 I think I have described that.

11 Q Okay. Let me ask you about that
12 point-blank.

13 A Uh-huh.

14 Q If your company has engaged in bad contact
15 marketing to kids or at least getting them the image
16 of cigarettes so that by the time they get to be 18 as
17 Michelle Schwarz was they begin to smoke, okay? If
18 your company did that, if your company lied to the
19 American people about the connection between smoking
20 and lung cancer, if your company lied to the American
21 people about addictiveness and smoking, if your
22 company gave half truths and misrepresentations and
23 defrauded the American people, and that message got to
24 Michelle Schwarz, do you think that because you are
25 doing what you are doing now, you should not be held

1 accountable for that conduct in the past?

2 A I think that's clearly for society and
3 juries to decide.

4 Q Okay. So if this jury were to find that
5 your company's conduct was wanton and reckless in
6 endangering the health of individuals in the past, and
7 that particularly had an impact upon Michelle Schwarz,
8 and this jury are to find Philip Morris accountable
9 for some responsibility in her death, do you think
10 that would be appropriate under these circumstances in
11 this case?

12 A Well, I don't know that it's -- I don't
13 know what your question is, but I'm sorry you lost me
14 on it, Mr. Wobbrock.

15 Q All right. I'll try it again.

16 A Sorry.

17 Q If this jury were to find that your
18 conduct in the past was so wanton and willful and
19 reckless that it bears some responsibility for
20 Michelle Schwarz's death, and found your company
21 monetarily responsible and assessed punitive damages
22 against them on top of compensatory damages, do you
23 think they would be unreasonable under those
24 circumstances?

25 A Not under those circumstances, no.

1 Q If your company is still engaging in
2 practices that are misrepresentations and half truths
3 and fraudulent, do you think this jury would be
4 unreasonable in assessing punitive damages against
5 your company?

6 A I don't think they would be unreasonable,
7 if they thought that.

8 Q Do you know anything about compensation in
9 the form of someone who switches from a high-tar
10 cigarette to a low-tar cigarette?

11 A I know some about it.

12 Q Do you know about the Barbro Goodman 1975
13 smoking simulator study?

14 A The what?

15 Q Barbro Goodman 1975 smoking simulator
16 study?

17 A No, I don't.

18 Q Do you know about the Schori-Dunn 1971
19 study that shows full compensation?

20 A I am not aware of these studies.

21 Q These are internal Philip Morris documents
22 that this jury has looked at over and over again. Do
23 you know anything about those?

24 A I don't know about those documents.

25 Q So when you testify that you don't believe

1 that your company's advertising is in any way
2 misleading or fraudulent, you're saying that without
3 that information in your database, aren't you?

4 A I am saying it based on what I know about
5 what we're required and can put in our ads and I say
6 it based on what I know we are now putting in our
7 Web site and we are putting in our advertisements.

8 Q But you don't know about the two studies
9 that I mentioned or any others, do you?

10 A Well, I don't know about the studies. I
11 know our scientists have studied it, and I know that
12 our scientists have had many discussions with the FTC
13 about the topic. And I haven't been privy to all of
14 those discussions.

15 Q Do you know your scientist, Dr. Seligman?
16 Do you know who he was?

17 A I've heard his name. I don't know who he
18 was.

19 Q Do you know of Dr. Wakeham?

20 A I also know his name, but don't know who
21 he was.

22 Q Did you know that Dr. Wakeham in 1961
23 declared in a memorandum that people that smoke high
24 filtration cigarettes tend to compensate and smoke
25 more cigarettes? Did you know that?

1 A I did not know that.

2 Q Did you know that Dr. Seligman told the
3 president of Lorillard Tobacco Company that there are
4 three subjects we shouldn't study, and one is them was
5 the relationship between smoking and cancer? Did you
6 know that?

7 A No, I didn't know that.

8 Q Now, the Master Settlement Agreement that
9 counsel has talked to you about, that was a settlement
10 of 50 lawsuits that were pending at the time, correct?

11 A Close to correct. It was 46 lawsuits.

12 Q 46. And they before brought by the
13 attorney generals in this country?

14 A That's correct.

15 Q And your company saw that freight train
16 coming at them for about, what, five years before
17 that?

18 A I beg your pardon?

19 Q Your company saw that lawsuit headed at
20 them for about five years, right until it was settled,
21 correct?

22 A I am not sure when we saw those lawsuits
23 beginning.

24 Q And when it was settled, it's when you
25 made the arrangements to -- and you agreed to do the

1 things that your lawyer has talked to you about that
2 included the making available of all of the documents
3 that were within your company, correct?

4 A That's correct.

5 Q And after those documents were made
6 available, your conduct whether about the same time or
7 at the time those documents were made available began
8 to change, would you agree? I am not talking about
9 you, ma'am, I am talking about your company.

10 A Actually, I think that our conduct had
11 begun to change before the Master Settlement
12 Agreement. I gave some examples, but I know we were
13 very concerned about a number of issues before that.

14 Q When that freight train was coming at you,
15 driven by 46 attorney generals, you could see the
16 writing on the wall, couldn't you?

17 A Well, I'm not sure what you mean by the
18 writing on the wall. I think we were always very
19 concerned about youth smoking and making sure that our
20 efforts were directed to adults.

21 Q You were always concerned about youth
22 smoking?

23 A As I recall, we were always concerned
24 about making sure that we directed our efforts to
25 adult smokers.

1 Q Were you ever encouraged by the
2 penetration by the 15-year-old market with Marlboro?

3 A Was I ever encouraged by it?

4 Q Your company. Was your company ever
5 encouraged by penetration of the 15-year-old market?

6 MR. DUMAS: Excuse me, Your Honor. I'm
7 giving counsel leeway, but he has interrupted the
8 witness several times. She is trying to do her
9 best. I think counsel should be asked to let the
10 witness finish her answers.

11 MR. WOBBROCK: I apologize, Ms. Lund.

12 THE WITNESS: Could you give me the
13 question again.

14 BY MR. WOBBROCK:

15 Q Was your company ever encouraged by the
16 penetration of the 15-year-old market with Marlboro?

17 A I don't know if my company was ever
18 encouraged by it, but I must tell you I'm not
19 encouraged by it. And I can't imagine knowing all the
20 people and the practices that the company was
21 encouraged by it.

22 Q When Mr. Weissman was at your company, he
23 was a pretty high-up individual?

24 A Well, when I knew him, he was, yes.

25 Q As high as you are you now?

1 A Oh, yes.
2 Q Maybe higher?
3 A I think so. I know so.
4 Q How do you get higher than you if you are
5 not the president?
6 A I'm not the president.
7 Q How do you get higher than you if you're
8 not the president? That's the next step, isn't it?
9 A I don't know. Maybe there is some in
10 between step, I'm not sure.
11 Q Mr. Weissman was in the position that
12 you're in right below the president of the company,
13 was he not?
14 A I am sorry, but I don't know exactly what
15 his position was; but I accept that he was high in the
16 company.
17 Q This is a memo, Exhibit 2, October 7th of
18 '73 -- excuse me, '53, from Mr. Weissman.
19 "Encouragingly enough, we have our greatest strength
20 in the 15-to-24-age group, as against Camel and
21 Chesterfield, which are proportionally stronger among
22 older groups." Do you see that?
23 A I see that.
24 Q That shows an interest in selling
25 cigarettes by your company to 15 year olds, doesn't

1 it?

2 A Ah, it was written in 1953. And I think
3 that that -- I think the legal age for smoking in some
4 places was 15 or 16 at that time.

5 Q So you think it was permissible because it
6 was the legal age in some states?

7 A Ah, it's hard for me to judge looking back
8 at 1953, but it's clear that this author thought it
9 was okay.

10 Q Well, that was Mr. Weissman.

11 A It's in 1953.

12 Q You think that's okay to have that
13 attitude in 1953 by the vice president?

14 A Well, I don't know that he was a vice
15 president then. I am not trying to represent who he
16 was then. I can tell you how I feel about now. I can
17 tell you how we feel about adult smokers and legal age
18 smokers and that is what we have restricted our
19 marketing to. And I don't know if at this time the
20 attitudes toward smoking were dramatically different
21 than they are today.

22 Q Okay. Well, let's see if they move up a
23 little bit.

24 A Okay.

25 Q And the issue here is whether you think

1 your company should be held accountable for what it
2 did in the past until it has a settlement imposed upon
3 it by the attorney generals of the states, when it saw
4 a freight train coming at it in the form of
5 litigation. That's the issue.

6 MR. DUMAS: Objection, Your Honor. That's
7 not a question, that's a closing argument.

8 MR. WOBBROCK: I am about to ask the
9 question.

10 THE COURT: Would you get to the question,
11 please, counsel.

12 BY MR. WOBBROCK:

13 Q Do you understand that to be the issue,
14 ma'am?

15 A That we are to be held accountable for
16 what happened before? Is that your question?

17 Q Yes. Do you understand that's what we're
18 talking about now?

19 A I think we are to be held accountable for
20 our actions as long as we have been in business.

21 Q This is Exhibit 115. This is 1970.
22 "Suggestions for research to answer questions raised
23 by the Philip Morris benchmark study. There are three
24 groups where smoker percentages and Marlboro shares
25 need to be checked: College students living on

1 campus, young people in the 14-to-17-age group, and
2 men in the military service."

3 Are you aware that your company was
4 interested in the smoking habits of 14 to 17 year olds
5 back in 1970?

6 A You know, I am where there was a study
7 where we studied underage smokers. And it might have
8 been some time in the 1970s, and needless to say, we
9 shouldn't have done it.

10 Q Are you aware that your company engaged in
11 the study of the smoking habits in 1973 of 12 year
12 olds?

13 MR. DUMAS: If counsel could identify the
14 date and exhibit number of the document.

15 MR. WOBBROCK: Exhibit 353, May 18th,
16 1973.

17 MR. DUMAS: Thank you.

18 THE WITNESS: You know, Mr. Wobbrock, I am
19 aware of two circumstances where I think we did the
20 wrong thing. One was the Roper study, and this may
21 be the other one, the opinion research where we
22 conducted some research that shouldn't have been
23 done.

24 BY MR. WOBBROCK:

25 Q And this Roper study Exhibit 146 that you

1 just mentioned in 1974. Is that the one you are
2 referring to?

3 A Well, I don't want to get mixed up here.
4 I know you showed me one memo before that said Roper
5 on it. I'm aware of two and this may be the Roper
6 study that I was referring to.

7 Q What is your understanding of what that
8 study did?

9 A I don't remember everything, but I do know
10 that it looked at smokers under the legal age, as a
11 part of a bigger sample.

12 Q Eighteen and less?

13 A I see that.

14 Q One of the individuals involved in this
15 was a fellow by the name of Myron Johnston?

16 A Yes.

17 Q Do you know him?

18 A Yes.

19 Q Do you know of him?

20 A Yes.

21 Q You worked with him?

22 A I knew him and I have met him in Richmond,

23 yes.

24 Q You just met him in Richmond?

25 A Uh-huh.

1 Q Here, Mr. Johnston in 1975, reports upon
2 the decline of the growth of Marlboro Red, and the
3 slower growth in the number of 15-to-19-year-old
4 smokers. And then down here talks about market
5 penetration amongst 15 and 17 year olds. Do you see
6 that?

7 A I see that.

8 Q Did you know Mr. Johnston was involved in
9 those kinds of activities?

10 A I do know that Mr. Johnston was involved
11 in taking all of the publicly available data and
12 sending his data and reports, outside reports on youth
13 smoking, on adult smoking, on population trends and
14 studying those data.

15 Q And it's your testimony that you met
16 Mr. Johnston once in Richmond?

17 A I met him more than once in Richmond, but
18 that's where I knew him.

19 Q Uh-huh. Isn't it a fact he worked with
20 you?

21 A I beg your pardon?

22 Q Isn't it a fact he worked with you and
23 reported to you?

24 A No. He didn't report to me in any way,
25 shape or form.

1 Q This is an exhibit -- this is not in
2 evidence, Your Honor. I am going to offer it.
3 MR. DUMAS: I'll need a moment to read it,
4 Your Honor.
5 THE COURT: Certainly, counsel.
6 MR. DUMAS: It's rather lengthy.
7 THE COURT: Why don't we do this: You're
8 going to need time to read that. It is five minutes
9 to 12:00 right now. It's going to take Mr. Dumas a
10 few minutes to read that, and he is reading slow.
11 MR. DUMAS: I can read quick.
12 MR. WOBBROCK: Your Honor, I am only going
13 to refer to the first couple lines on the page.
14 THE COURT: All right. Let's see how
15 quickly Mr. Dumas reads.
16 MR. DUMAS: I am going to need to read the
17 rest of it. I read the first two lines. I have to
18 read the rest of it.
19 MR. WOBBROCK: If I could finish this
20 question, Judge, then I think we'll be ready to go.
21 MR. DUMAS: Okay. Thank you. No
22 objection.
23 THE COURT: All right.
24 BY MR. WOBBROCK:
25 Q You, in fact, worked with Mr. Johnston in

1 August of 1988 when he sent you this memorandum
2 regarding the marketing of Marlboro Ultra Lights;
3 isn't that true?

4 A Well, that's interesting. I don't
5 remember this memo, but I did tell you that I met him
6 in Richmond. It appears as though I met him at a
7 meeting, at least once I met him at a meeting. May I
8 read it and see what he had to say?

9 Q This is Exhibit 2022.

10 A Okay. I've had a look at it now, and what
11 was your question?

12 Q I've already asked my question. You
13 worked with Mr. Johnston on at least one occasion in
14 1988?

15 A Yes. I didn't recall receiving a memo
16 like this, but I clearly must have asked him a
17 question at the meeting and he responded to it with
18 this letter.

19 Q I've got two minutes, so let me just ask
20 you a couple questions.

21 MR. WOBBROCK: If I might, Your Honor?

22 THE COURT: Go ahead.

23 BY MR. WOBBROCK:

24 Q The payments that are owed under the
25 Master Settlement Agreement have been factored into

1 your company's prices for its products, has it not?

2 A Well, I am not -- I know that we have
3 factored some in, I am not sure that all of the
4 payments have been factored in. I am not sure about
5 that.

6 Q The payments that have been made or will
7 be made in the near future, have been covered by a
8 price increase on your company's product, have they
9 not?

10 A We have taken price increases and they
11 will cover the payments, I believe.

12 Q And that obligation that you have has been
13 reflected in the stock market evaluation of your
14 stock, has it not?

15 MR. DUMAS: Objection, Your Honor. This
16 defendant has no stock. I ask that this exhibit be
17 taken off the screen. This has already been subject
18 to the Court's ruling.

19 MR. WOBBROCK: I meant the company. I
20 didn't mean your stock.

21 MR. DUMAS: I have a matter for the Court,
22 Your Honor.

23 THE COURT: Well, I guess we'd better stop
24 here now.

25 MR. DUMAS: Just one moment, Your Honor,

1 if I may indulge?

2 Yes, Your Honor, I think I have a matter
3 for the Court.

4 THE COURT: All right. We will go to
5 lunch. Be back in the jury room at 1:55. Thank you
6 very much. The Court's out of session. 1:25,
7 because I want them back in here at 1:30.

8 MR. DUMAS: Thank you, Your Honor.

9 (The following proceedings were held in
10 open court, out of the presence of the jury:)

11 THE COURT: Do you want to take that issue
12 up now?

13 MR. DUMAS: Well, Your Honor, Philip
14 Morris, Incorporated, the defendant in this case
15 does not issue stock. There is no stock value for
16 this defendant. And for Mr. Wobbrock to show
17 whatever that was, some recent printout showing
18 valuation of stock, I am assuming, I didn't look at
19 it, I am assuming that refers to stock of Philip
20 Morris Companies. And Philip Morris Companies is
21 not a defendant in this case.

22 MR. WOBBROCK: I am indicted by the
23 imprecision of my language, and I should have said
24 the parent corporation which owns Philip Morris, and
25 I will say that when we come back.

1 MR. DUMAS: Your Honor, the stock price of
2 Philip Morris Companies is irrelevant to this case.
3 Whether the stock price of Philip Morris Companies
4 has gone up, down or sideways, or hasn't changed at
5 all because of the MSA, has no bearing on this
6 jury's determination whether punitive damages should
7 be awarded, and, if so, what the financial condition
8 is of this defendant, Philip Morris, Incorporated.
9 We are going down a collateral road, Your Honor. It
10 is totally collateral to the issues before this
11 jury.

12 MR. WOBBROCK: Mr. Tauman's going to talk
13 about it after I bring this to the Court's
14 attention. Through Robert Johnson, Robert Johnson
15 from California, you might recall without objection
16 all of this was before the jury and all of this, in
17 addition to other exhibits which we can show you
18 that had to do with Philip Morris Companies, because
19 we had to tease out the -- and this exhibit, Philip
20 Morris Companies, whoops, I didn't mean to make
21 anybody seasick.

22 And this exhibit without objection -- or
23 maybe there was an objection at the beginning.

24 MR. DUMAS: A rather lengthy objection,
25 Mr. Wobbrock. Your memory becomes selective,

1 perhaps as poor as your hearing.

2 MR. TAUMAN: What?

3 MR. WOB BROCK: Anyway, Mr. Tauman will
4 take it from there. Obviously I was imprecise and
5 stand accused.

6 MR. TAUMAN: Your Honor, I think
7 Mr. Wobbrock has said it. That bridge has been
8 crossed. Mr. Dumas lodged his objection to that
9 evidence. Your Honor overruled that objection,
10 allowed the economic witness to testify as to the
11 market capitalization value which depended on the
12 stock value of Philip Morris Companies, Inc.

13 It was a brief, and this likewise will be
14 brief. It is to make the point that, in fact, the
15 value of the company as measured -- as the jury has
16 heard, is measured by the market capitalization
17 method that Mr. Johnson testified to, has been not
18 only unaffected but has actually increased during
19 the period -- I guess this is a ten-year period,
20 including the period after the Master Settlement
21 Agreement.

22 MR. DUMAS: Your Honor, where is the
23 expert testimony that the increase in the stock of
24 Philip Morris Companies has anything to do with the
25 Master Settlement Agreement, has anything to do with

1 tobacco? Who knows why it has gone up? Maybe sales
2 are great on Miller Beer. Maybe it's Nabisco.
3 Maybe it's something else. Who knows? We had a
4 long talk this morning, Your Honor, about the
5 importance of expert foundation for witnesses to
6 give opinions.

7 So just putting in a piece of evidence
8 that says that the stock of Philip Morris Companies
9 has gone up apparently over some period of time
10 apparently is totally irrelevant and means nothing
11 unless an expert witness comes in and gives an
12 opinion.

13 Mr. Johnson did not give an opinion that
14 the stock of Philip Morris Companies has gone up,
15 down or sideways because of the Master Settlement
16 Agreement. This is a collateral issue, Your Honor,
17 and the charts that were shown to Mr. Johnson dealt
18 with the operating revenue of Philip Morris. Over
19 my lengthy objection, the Court did allow
20 Dr. Johnson to show the pie chart. The total
21 revenues and the total income of Philip Morris
22 Companies, which I believe to be inappropriate, and
23 now they want to do it again by talking about the
24 stock price of Philip Morris Companies.

25 THE COURT: But didn't the Court limit

1 that to the percentage, and not to the actual
2 financial figures on the pie chart?

3 MR. DUMAS: That's true, Your Honor. You
4 split the baby a little bit there.

5 MR. WOBBROCK: You can see my artful work,
6 Judge, when I crossed those things out I kind of
7 smudged it pursuant to the Court's order crossing it
8 out -- not the smudging. You didn't order that I
9 smudge it, but you ordered that I cross it out.

10 MR. DUMAS: But that doesn't talk about
11 the stock price of Philip Morris Companies,
12 Your Honor, and what may have caused it to go up or
13 down. Where is the foundation for this?

14 MR. TAUMAN: Your Honor, if I may, in
15 cross-examination obviously there is a some
16 latitude, and the witness did say that Philip Morris
17 raised its prices for its cigarettes to account for
18 the obligations under the Master Settlement
19 Agreement.

20 I think we're entitled to show because the
21 issue of the value of Philip Morris, Inc., which is
22 a -- the defendant in this case, and is an issue in
23 the case, we're entitled to show that the stock
24 value actually rose during this period of time, and
25 presumably, and I think inferentially, because

1 Philip Morris did, in fact, raise its prices, so
2 they suffered no loss of income. In fact, their
3 income went up, as the other graph shows.

4 MR. DUMAS: Your Honor, that's
5 speculation. If they wanted to get into that, they
6 should have laid a proper foundation with an expert
7 witness and they didn't do it.

8 THE COURT: All right. Let the Court
9 think about that over lunch.

10 MR. TAUMAN: Take thank you very much,
11 Your Honor.

12 THE COURT: You can step down.

13 MR. DUMAS: But you have to come back.

14 THE WITNESS: I have to come back?

15 THE COURT: Yes, you have to come back.

16 (Noon Recess taken at 12:05 p.m.)
17
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AFTERNOON SESSION

(Whereupon, the following proceedings were held in open court, out of the presence of the jury at 1:30 p.m.):

THE COURT: Do we have any further arguments or has counsel exhausted their large reservoir of advocacy?

MR. TAUMAN: Not quite, we've regenerated over the lunch hour. And I am sorry, I know Ms. Lund has assumed the stand, but I would ask her to absent herself just temporarily.

THE COURT: Well, she doesn't mind getting a little exercise, but she would rather it be her own choice of exercise.

MR. TAUMAN: And the reason is that we have decided not to use this exhibit with this witness right at this time, because we want to lay an additional foundation. So Mr. Wobbrock will go ahead with his examination and not use this exhibit. The reason I am taking the Court's time is we do plan on using this exhibit very shortly, so rather than interrupt the jury at that time -- is anyone listening?

MR. DUMAS: Chuck, I never ignore you.

MR. TAUMAN: Rather than interrupt the

1 jury at that time, we thought this would be a
2 convenient time to do it.

3 That is that we intend to examine the
4 witness under the Court's direction in the motion in
5 limine about her, I guess, interest in the stock,
6 meaning her stock ownership and stock option,
7 pension plan, or personal ownership, which shows as
8 the Court indicated, bias or interest.

9 And I think it is fair to -- because the
10 stock that she is awarded as bonuses, compensation,
11 whatever, cannot be PM USA stock, by definition. It
12 is PMC, Philip Morris Companies stock. I think it
13 is legitimate inquiry at that time then to inquire
14 about the value of that stock, what it is doing,
15 what it's done during her tenure.

16 Actually, when I got this, this actually
17 comes off the Philip Morris Web site that I got this
18 off, and I started in 1992, which was actually after
19 she had been there for five or six years, but by the
20 time she became an important enough executive to
21 start that process. That's our pitch.

22 MR. DUMAS: Are you done?

23 MR. TAUMAN: I am done.

24 MR. DUMAS: Your Honor, my position on
25 this is as follows, and I promise I won't pound the

1 table, so we don't scare Ms. Bradford.

2 I guess the Court has already ruled on
3 this, Your Honor. You came up with a ruling of
4 salaries and compensation is not admissible, but
5 stock options are, as I understand it. I still
6 object to that, Your Honor. I do not believe that
7 when a witness enters the courtroom, they lose all
8 their rights of privacy, and their personal
9 financial matters and their retirement plan becomes
10 subsequent to scrutiny.

11 It seems to me if I can't say how many
12 billions of dollars Philip Morris International has
13 to pay in the Master Settlement Agreement, Ms. Lund
14 doesn't have to open up her portfolio and talk about
15 the numbers of her shares. I think it's fair that
16 she has -- that it be brought out that she owns
17 Philip Morris stock. That proves the point.

18 That demonstrates that she has potentially
19 got some kind of bias or whatever, has some
20 financial interest in some tangential sense. I
21 guess that's reasonably fair, but to get into the
22 nitty gritty seems to be a little bit overly
23 invasive and not necessary to accomplish plaintiff's
24 purpose.

25 Finally, if the Court allows that she owns

1 stock, I don't know why we have to go into --
2 couldn't we just say, "Philip Morris stock," and let
3 it be done at that? I don't think that should open
4 the door to allow in testimony regarding what they
5 tried to do earlier about the ups and downs of the
6 share price of Philip Morris Companies stock.

7 Thank you, Your Honor.

8 THE COURT: All right. In the interest of
9 the search for truth, there is no Philip Morris USA
10 stock.

11 MR. DUMAS: That's true, Your Honor.

12 THE COURT: There is Philip Morris Company
13 stock. So let's call a duck a duck. If it walks
14 like a duck and quacks like a duck, most people call
15 it a duck. Let's do that. And they will be allowed
16 to do so.

17 All right. Bring the witness in and bring
18 the jury.

19 (The following proceedings were held in
20 open court, the jury being present at 1:38 p.m.):

21 THE COURT: All right, counsel. You may
22 proceed with the cross-examination.

23 MR. WOBBROCK: Thank you, Your Honor.
24
25

FURTHER CROSS-EXAMINATION

BY MR. WOBBROCK:

Q Ms. Lund, as a corporate officer -- is that correct, are you a corporate officer?

A Yes, I am.

Q Part of what you are compensated with is stock options; is that correct?

A That's correct.

Q And stock options are options in which you are given the right to buy a share of stock -- I'll just make up some numbers -- \$10, and then if it goes up, you can pay \$10 for it six months from now even though it might be worth \$11, and you'd make a dollar at the time you make that transaction; is that correct?

A That's correct.

Q Okay. Stock options motivate you to work hard for the company? That's the theory behind it, correct?

A They're one way that we work hard for the company, sure.

Q And the stock options have are in Philip Morris Company, correct, Philip Morris Companies,

1 Inc.?
2 A That's correct.
3 Q And if we were to look at the company,
4 we'll call it the company, we can see that the stock
5 since about 1992, was trading around 25, is now around
6 55 or thereabouts; is that correct?
7 A That appears to be correct.
8 Q About \$20 more a share in the last --
9 A Ten years.
10 Q Ten years, and the Master Settlement
11 Agreement was in -- you indicated -- you tell me
12 again, tell the jury again.
13 A It was in late 1998.
14 Q Stock took a dip and then went back up.
15 Went up briefly right after the time of the Master
16 Settlement Agreement; is that correct?
17 A It appears to have.
18 Q And it's back up almost to where it was
19 after the Master Settlement Agreement.
20 A After it took that big fall, it appears to
21 go back up.
22 Q All right. And you're proud of that?
23 A Well, I work for a company that I'm proud
24 to work for, Philip Morris, USA. And to the extent we
25 contributed to this, that would be a good thing. I

1 don't know to what extent we did contribute to it.

2 Q Now, you mentioned that your new president
3 has come up with a mission statement. And before you
4 had that mission statement, you had other mission
5 statements, correct?

6 A There were other mission statements, as I
7 recall.

8 Q And the new mission statement mentions
9 your desire to be respected and to be seen as a
10 corporation with integrity, correct?

11 A I think it says to be the most
12 responsible, most effective and the most respected
13 developer, manufacturer and marketer of consumer
14 products made for adults.

15 Q And one of the things he brought when he
16 came to your corporation was a change in that mission
17 statement to actually assert those kinds of goals:
18 Integrity, respect, those sorts of things?

19 A Well, I'm not sure that he -- integrity
20 and respect and so forth, I think those are our core
21 values, and they're values by which we operate the
22 company. I am not sure they are new. And I also
23 think that to be the most respected is a very tall
24 order for us to achieve.

25 Q Do you think that your president would be

1 the kind of person that would say, "We're a very,
2 moralistic company"?

3 A We're a very moralistic company? I don't
4 know if he would say that.

5 Q One of your high corporate officers said
6 that in 1976? Do you know who that was?

7 A I don't know who that was.

8 Q It was Dr. Wakeham. Do you know who
9 Dr. Wakeham was?

10 A I'm sorry, I don't.

11 Q Okay. Well, your corporate mission
12 statement of 1993 indicates, number one, maintain the
13 highest quality of people. Are you familiar with
14 that?

15 A I don't recall it. I could take a look at
16 it and see if I remember it.

17 Q All right.

18 MR. DUMAS: Your Honor, excuse me. I have
19 no objection, but I thought we had an understanding
20 that documents would be showed to counsel before
21 they're exhibited.

22 MR. WOBBROCK: This is the company's.

23 MR. DUMAS: I know that, Mr. Wobbrock. I
24 thought we had an understanding that documents would
25 be shown.

1 Am I incorrect, Your Honor?
2 THE COURT: No, you are correct, counsel.
3 MR. DUMAS: Okay. Do you have an extra
4 copy for me?
5 MR. WOBBROCK: No, I don't.
6 MR. DUMAS: Okay. Thank you.
7 BY MR. WOBBROCK:
8 Q Let me show you this one of 1993.
9 A Thank you.
10 Q And that will be marked as exhibit -- I
11 think it is 2023, but I'm not sure.
12 THE COURT: It will be the next exhibit.
13 MR. WOBBROCK: Thank you, Your Honor.
14 MR. DUMAS: I'm sorry, what's the number?
15 MR. WOBBROCK: 2023.
16 BY MR. WOBBROCK:
17 Q As soon as you look at that, I will ask a
18 couple questions about it. While we're doing that
19 then you can look at this one also.
20 A Okay. Should I be reading every word of
21 this, Mr. Wobbrock?
22 Q I am just going to ask you some general
23 questions about it. I think you'll see it is pretty
24 obvious.
25 A Okay.

1 Q I'll stick a sticker on that one if you
2 are done with it.

3 A Okay.

4 Q Thank you. So if we look at this mission
5 statement of 1993, we see just at the broad headings
6 here about, "Maintaining the highest quality of
7 people." Your name is mentioned, "Nancy Lund needs
8 broadening, but is currently the most qualified to
9 handle Marlboro."

10 A I wasn't very good, I guess.

11 Q "Protecting and building our brand
12 franchises, growing profitable new business,
13 maintaining productivity and synergy in all businesses
14 at all times. Making total quality management -- a
15 reality in every aspect of our business. Managing
16 with a global perspective." That sort of thing. You
17 would agree that that was what you were aware of as
18 your mission in 1993, those kind of broad outlines?

19 A Yes. I want see if I can just clarify
20 what I just looked at right there. That appeared to
21 be, and I don't want to quibble, but it appeared to be
22 Mr. Campbell writing to Mr. Miles who is head of the
23 parent company about his assessment of what we had
24 accomplished during the year.

25 So it doesn't look to me like kind of a

1 mission statement. It looks more like the objectives
2 that were set forth and how we did against them. I
3 don't mean to quibble about that, but they're a little
4 bit different.

5 Q Now, the next document, how would you
6 characterize it, the one you looked at?

7 A Well, that appeared to be a draft of a
8 speech that Ms. Merlow (ph) was going to make, but I
9 don't recall to whom. But it was about the mission
10 statement that I referred to a couple of times and the
11 core values that are part of that mission statement.

12 Q Okay. And we see the first one is, "We
13 believe in operating with integrity, trust and respect
14 both as individuals and as a company." That is a
15 laudable mission approach to business, correct?

16 A It's a very important one.

17 Q Right. And then the next one demonstrates
18 a passion to succeed, simply the kind of things we saw
19 in the previous one, executing with quality, like
20 total quality control. Would you agree basically, the
21 broad outlines we saw in the previous one. It's not a
22 trick question, it is similar to the previous?

23 A I am not sure I would call them the same.
24 I mean, one is about integrity, trust and respect, as
25 it says. One is about executing with quality. It

1 wasn't really referring to like TQM, which is this
2 concept of total quality management, which I think
3 Mr. Campbell referred to in the first one.

4 Q Right. Well, putting aside the corporate
5 speak, would it be fair to say that the emphasis on
6 respect and integrity put in a document for you folks
7 to all look at, sign on to and agree with, came after
8 the Master Settlement Agreement in 1998?

9 A It decidedly did not come after the Master
10 Settlement Agreement in 1998. It came before the
11 Master Settlement Agreement in 1998.

12 Q Right before that train hit?

13 A Well, I am not sure when that train hit,
14 but I remember us writing it and it was before the
15 Master Settlement Agreement.

16 Q But you were aware of the litigation at
17 the time, were you not?

18 A I was aware of the litigation, yes.

19 Q And so was everybody else in the
20 corporation?

21 A I think everybody was aware, yes.

22 Q I want to change subjects a little bit.
23 That might relieve you. On the denicotinized
24 cigarette, you testified that you spent \$36 million on
25 your marketing effort in the test markets?

1 A That's what I recall.
2 Q And that was four or five cities?
3 A I think it was six cities.
4 Q If somebody wanted to buy one of those in
5 Portland, they would of had to go Spokane, wouldn't
6 they?
7 A I think they would have to travel.
8 Q They weren't sold around here anywhere.
9 A I think Spokane was one of the test
10 markets.
11 Q And that 36,000 -- 36 million was spent --
12 that compared to about 45 million to launch Merits in
13 1976, didn't it?
14 A Well, you couldn't look at it that way,
15 Mr. Wobbrock.
16 Q Well, how much did it cost to launch
17 Merits in 1976?
18 A It probably cost a lot more than 45 and
19 that was for a national program. This was \$36 million
20 for a test market, so each test market was probably
21 about six or \$7 million. On a national basis would be
22 a lot more.
23 Q Six or \$7 million per market?
24 A That's correct.
25 Q Right. And you said five or six markets,

1 I believe?
2 A Right.
3 Q Okay. But the amount of money that you
4 put into it was less than you put in to market Merits,
5 if we've seen a document that said that Merits were
6 launched for 36 million or 45 million in 1976?
7 A I don't recall exactly what the numbers
8 were on Merit. But what we spent in those test
9 markets probably would have been on a national basis
10 more than we spent on Merit.
11 Q But the actual dollars you spent were
12 comparable?
13 A \$36 million is less than 45 million, so I
14 agree with you on that point. I was just trying to
15 explain what the difference is in the two.
16 Q What is the market -- excuse me. What is
17 the budget now in dollars for marketing and promotion
18 of your company for cigarettes all brands?
19 A As I think I talked about before, it is
20 about \$5 billion.
21 Q \$5 billion?
22 A Yes. Mostly in price promotion, yes.
23 Q Mostly in promotion, you say?
24 A Mostly in price promotions.
25 Q I'm sorry.

1 A Price promotions.

2 Q Price promotions. In other words, price
3 promotion when you reduce the price to your dealers
4 instead of paying -- I will just make up a number, \$3
5 for a pack of cigarettes, they might be able to buy it
6 for 2.50 or something like that, a reduction?

7 A A reduction.

8 Q Right. Whatever it is and those numbers
9 are probably wrong. And one of the things that
10 happens if someone is found to be selling to minors is
11 that those price promotions are withdrawn, correct?

12 A Yes. If we learn that a retailer is
13 selling to minors those promotions are to be
14 withdrawn.

15 Q But the product remains in the retail
16 store, doesn't it?

17 A Yes, the product does.

18 Q And Philip Morris still gets paid for it,
19 don't they?

20 A Sell -- we don't sell it to the retailers,
21 Mr. Wobbrock. And we have no control over that
22 retailer, how he distributes our product. He can buy
23 that from a distributor or a wholesaler at his will.

24 Q But Philip Morris doesn't require that the
25 product be taken out of the convenience store. It

1 just requires that the promotional discount be
2 discontinued, correct?

3 A Yes. We don't require that. I don't know
4 that we could, but we don't.

5 Q So the product continues to be sold?

6 A That's correct.

7 Q We saw a little graphic that was presented
8 about some of the things that were curtailed as part
9 of the Master Settlement Agreement. And one of the
10 things that was stopped were those organizations I
11 think you mentioned, TI and CTR, correct?

12 A Yes.

13 Q I'm not sure if you are familiar with this
14 document, Exhibit 187? I think the jury has seen it
15 before. November 17th, 1978. By the way, do you know
16 who Shook, Hardy & Bacon is?

17 A I know it's a law firm.

18 Q Have you ever had any dealings with them?

19 A I don't know.

20 Q Do you know who Jim Bowling is?

21 A I think he was what it says there, the
22 corporate affairs vice president.

23 Q We saw a videotape of him earlier back in
24 1976, when he was smoking a cigarette. Isn't that the
25 same fellow? Did you ever meet him?

1 A I believe I have met him.

2 Q Bob Seligman, did you know who he was?

3 A No.

4 Q And Tom Osdene, did you know who he was?

5 A No, I didn't know him.

6 Q And these people if they worked in
7 Richmond, you wouldn't have as much contact because
8 you worked in downtown New York City, right?

9 A Well, I generally don't have as much
10 contact with the people in Richmond as New York.

11 Q Okay. It says here at the outset, "Arnold
12 Henson reminded participants of the meeting that there
13 should be no written record of what transpired issued
14 for distribution. It was perfectly all right to take
15 notes, but you should keep them in your own personal
16 file."

17 And before we go any further into this
18 document, let me make sure that we understand what was
19 required and what wasn't required by the Master
20 Settlement Agreement.

21 Documents that had been produced in
22 litigation to the Attorney General cases were required
23 to be made public, is that your understanding, on the
24 Internet?

25 A I thought that all of our documents were

1 to be made public.

2 Q Okay. And those documents that were made
3 public would include documents that formally were
4 completely and totally confidential within the
5 corporation, correct?

6 A That I am not sure of. I am not sure.

7 Q Have you ever seen this document before?

8 A I have not seen this document, no.

9 Q Let me ask you if you are aware of this.

10 "As a means of introduction, Bill Shinn
11 described the history particularly in relationship to
12 CTR. CTR began as an organization called the Tobacco
13 Industry Research Council, TIRC."

14 Are you familiar with that, that CTR was
15 formally called TIRC?

16 A No, I am sorry, I was not.

17 Q Okay. But you are aware of what kind of
18 organization CTR was, are you not?

19 A In actual fact, I don't know much about
20 CTR.

21 Q Well, what do you know about it?

22 A I know very little.

23 Q Do you know that it was a research
24 organization?

25 A Well, it was called the Council for

1 Tobacco Research, so I kind of figured that out, but
2 that's about it.

3 Q Have you ever been told that it was set up
4 as a shield and a front? Let me read those sentences.

5 "It was set up as an industry shield in
6 1954. Bill Shinn feels that 'special projects' are
7 the best way that monies are spent. On these
8 projects, CTR has acted as a front."

9 Were you ever told that it was set up as a
10 front and a shield?

11 A No, I was not.

12 Q This is the first you've ever heard of it
13 is here in this courtroom?

14 A That's the first I have heard of it.

15 Q But you were aware, as a consequence of
16 the Master Settlement Agreement, that it had to be
17 dissolved, were you not?

18 A That's correct.

19 Q Both CTR and TI?

20 A That's correct.

21 Q Did you ever understand that it was
22 dissolved because what they had been engaged in was
23 bad conduct?

24 MR. DUMAS: Objection, Your Honor. That's
25 argumentative.

1 MR. WOBBROCK: It's a question,
2 Your Honor.

3 MR. DUMAS: It's argumentative,
4 Your Honor.

5 THE COURT: You want to rephrase it,
6 counsel.

7 BY MR. WOBBROCK:

8 Q Were you ever aware of why they were
9 required to be dissolved?

10 A No, I was not.

11 Q Do you know who a Horace Kornegay was or
12 Fred Panzer?

13 A I know neither one.

14 Q Do you know of -- I think you already
15 indicated in response to our previous exhibit that you
16 know what the Tobacco Institute was?

17 A I think I know a little bit more about
18 them.

19 Q Part of marketing has some aspects of
20 public relations, does it not, and vice versa?

21 A I don't think of it that way. I don't
22 think of TI that way either.

23 Q You don't think of TI as a public
24 relations arm?

25 A I don't know if that is what it was.

1 Q Uh-huh. Well, I want you to look at this
2 exhibit and I'll ask you a couple questions. This is
3 1972. This is Exhibit 130. Have you seen this
4 exhibit before? It is called the Roper proposal.

5 A I don't believe I have.

6 Q Let me represent to you that it's been
7 clearly established in the evidence that these two
8 fellows were involved with TI, Tobacco Institute. You
9 are looking at your lawyer. Do you want to ask him a
10 question?

11 A No. I mean, okay. You represented, I'll
12 accept that.

13 MR. DUMAS: Your Honor, I think she looked
14 my way because I was starting to stand up.
15 Your Honor, this is way beyond the scope of
16 Ms. Lund's direct examination. She has never even
17 hardly heard of this organization. She's never seen
18 the document. It's way beyond the scope of direct
19 examination. I think we're too far afield.

20 MR. WOBBROCK: I'll bring it back,
21 Your Honor.

22 THE COURT: All right.

23 BY MR. WOBBROCK:

24 Q "For nearly 20 years, the industry has
25 employed a single strategy to defend itself on three

1 major fronts: Litigation, politics and public
2 opinion. While the strategy was brilliantly conceived
3 and executed over the years helping us win important
4 battles, it is only fair to say it that it was not
5 intended to be a vehicle for victory. On the
6 contrary, it has always been a holding strategy
7 consisting of creating doubt about the health charge
8 without actually denying it."

9 Do you see that?

10 A I see that.

11 Q "On the litigation front for which the
12 strategy was designed that has been successful, while
13 we have not lost a liability case, it's not because
14 juries have rejected the anti-smoking arguments."

15 Now, your previous testimony was that you
16 believe that your company had behaved responsibly, but
17 now was behaving more responsibly. Having seen that
18 CTR in the previous document was set up as a front and
19 a shield, and this document pointing out that the
20 strategy to defend yourself was to create doubt about
21 the health charge without denying it, is it still your
22 opinion that your company behaved reasonably even
23 before the Master Settlement Agreement and the
24 conditions that it imposed upon you?

25 A Yes, it is.

1 Q It is. In light of those kinds of
2 documents, that is what you believe, ma'am?

3 A Well, I don't know how I can explain. I
4 can only tell you what I know about the conduct of our
5 company, what we did and what we do related to the
6 marketing of our products and how we market them. And
7 I think I have explained that before.

8 Q But you are a relative newcomer, aren't
9 you? You started there in 1985.

10 A I have been there for 17 years, and I was
11 acquainted with people who were there before. And I
12 studied what the company had done before in terms of
13 marketing its products to adults who choose to smoke.

14 Q Well, if you studied it, let me ask if you
15 studied this. Were you aware, this is Exhibit 308,
16 Dr. Wakeham wrote, "That cancer research" -- this is
17 September 22nd, 1959.

18 "That cancer researchers now, I believe,
19 generally agree that lung cancer is the end stage of a
20 series of sequential changes."

21 Were you aware that one of the top
22 scientists in your company was aware of that as early
23 as 1959?

24 A I was not aware of that.

25 Q Is this the first time you have become

1 aware of it today right here in this courtroom?

2 A Yes, it is.

3 Q I'm going to ask if you are familiar with
4 this. This is Exhibit 202. This is a letter from
5 Robert Seligman, who was the head of R & D, to Alex
6 Pierce at Lorillard Company, March 31st, 1980? And he
7 is sending -- "I sent you recommendations for industry
8 research which we prepared last year."

9 And then he has a list of potential
10 long-term scientific studies. And then on the back
11 page, he says, "Subjects to be avoided: Developing
12 new tests for carcinogenicity." That's number one, do
13 you know what that means? Do you know what
14 carcinogenicity means?

15 MR. DUMAS: Objection, Your Honor. This
16 is a marketing witness. Counsel is trying to
17 impeach her with documents that are 40 years old
18 from the Research & Development Department regarding
19 research that has nothing to do with this witness'
20 job at Philip Morris.

21 THE COURT: The Court will then ask her to
22 answer questions that she can. It's the Court's
23 understanding that when she got her position, she
24 reviewed a lot of old documents and history of the
25 company to bring herself up knowing the history of

1 the company. If she doesn't know the question, she
2 can say, "I can't answer the question."

3 Proceed, counsel.

4 BY MR. WOBBROCK:

5 Q Do you know what carcinogenicity means,
6 ma'am?

7 A You know, I really couldn't explain what
8 it means.

9 Q Cancer causing?

10 A I think that is what it means.

11 Q Okay. I want you to assume that's what it
12 means.

13 A Okay.

14 Q So, "Subjects to be avoided: Developing
15 tests for cancer-causing ability.

16 "Number two, Attempt to relate human
17 disease to smoking." That seems to be pretty
18 straightforward, would you agree, that statement?
19 That is to be avoided. That is a subject to be
20 avoided?

21 A I see what it says.

22 Q And "Conduct experiments which require
23 large doses of carcinogen to show addictive effect of
24 smoking."

25 Have you seen this document before, ma'am?

1 A I have not seen this document.

2 MR. DUMAS: Additive.

3 MR. WOBBROCK: I said "addictive," and I
4 meant to say "additive." Thank you. I'm sorry.

5 BY MR. WOBBROCK:

6 Q You have not seen this document before?

7 A No, I have not.

8 Q Now that you've seen it, is it still your
9 opinion that your corporation acted responsibly prior
10 to the Master Settlement Agreement imposing the
11 conditions that it imposed upon them?

12 A I realize that you've just shown me a
13 document that outlines these things. It's out of
14 context for me, so I don't really understand the
15 nature of how these documents were written. I tell
16 you about what I know of the history, what I studied
17 mainly were the marketing, the marketing history of
18 the company and so forth, and I know that to be
19 responsible.

20 Q We'll talk about that in a little bit.
21 Well, I think one of your previous portions of your
22 testimony, you said that -- in response to Mr. Dumas'
23 question, "Who is in controlled here, the consumer or
24 the manufacturer when it comes to selling a product?"
25 Words to that effect. Do you recall that exchange?

1 A Yes, I do.
2 Q I believe -- I tried to write it down
3 that, "The consumer makes a choice every time they put
4 their money down."
5 A I bet I would have said that.
6 Q That's consistent with how you feel?
7 A That is.
8 Q So I got it pretty close to what you said
9 there?
10 A I think you might have gotten it exactly
11 right.
12 Q Well, you said your company was a little
13 slow, I think were the words that you used, to admit
14 that cigarettes were addictive, correct?
15 A I think we were slow to use those words.
16 I think we chose other words, like habit forming and
17 hard to quit.
18 Q And even if the 1988 Surgeon General's
19 report put to rest the dispute about habit forming and
20 addictive and whatever, Mr. Campbell came before
21 Congress under oath six years later and still said he
22 didn't believe it was addictive, didn't he?
23 A I believe he did say that.
24 Q And really the reason that you were
25 reluctant -- when I say you, ma'am, I mean your

1 corporation and the people you work with, were
2 rereluctant to admit that, is because of what exactly
3 what might happen that is happening right now between
4 you and I and this jury and this Court? Isn't that
5 the reason you didn't want to admit that it's
6 addictive?

7 A I think I gave my best explanation for why
8 we changed what we did in terms of our definition of
9 addiction and our definition of causation, and that's
10 the best answer I know how to give.

11 Q This is Exhibit 206. I'm going to ask you
12 if you've seen this before? This is September of
13 1980. Again, these are fellows involved with the
14 Tobacco Institute on behalf of Philip Morris. It's
15 not a very good copy. Talks about the use of the term
16 "addictive," by the National Institute of Drug Abuse
17 added to the cigarette warning. Do you see that?

18 A I see that, yes.

19 Q Okay. And here on the back page it says,
20 "I feel badly about my own lack of intelligence
21 gathering in this situation, but I don't think the
22 questions I now raise are academic." Shook, Hardy,
23 that's the lawyers we've previously talked about that
24 you're aware of, remember?

25 A Yes.

1 Q "Shook, Hardy reminds us, I'm told, that
2 the entire matter of addiction is the most potent
3 weapon a prosecuting attorney can have in a lung
4 cancer cigarette case. We can't defend continued
5 smoking as, quote, free choice, unquote, if the person
6 is addicted."

7 The first question: Have you seen this
8 document before?

9 A No, I have not.

10 Q Let me just take a brief aside. Do you
11 think that they chose you to be a witness in this case
12 because you have not been exposed to any of this kind
13 of thing?

14 MR. DUMAS: Objection, Your Honor. I have
15 a matter for the Court if counsel is going to
16 continue this line.

17 MR. WOBBROCK: I'll go on to something
18 else.

19 BY MR. WOBBROCK:

20 Q Let me ask you if you agree with this
21 statement, "We can't defend continued smoking as free
22 choice if the person is addicted."

23 Do you agree with that?

24 A I don't agree with that. I think the use
25 of the word addicted doesn't mean that you can't quit.

1 And I think we use the word "addictive." It used to
2 be habit forming. It can mean it's very difficult to
3 stop doing it, but it doesn't mean that you can't make
4 a choice.

5 Q Well, when you said that people go in and
6 exercise a choice when they put their money down, that
7 choice is quite altered if they're putting their money
8 down for an addictive product, isn't it?

9 A Well, I don't believe it is. I think they
10 have a choice to not smoke.

11 Q You do?

12 A I do.

13 Q We know you haven't looked at a lot of
14 these documents, but have you ever talked to
15 addictionologists or people who specialize in this
16 area about the problems presented to people because of
17 nicotine addiction?

18 A No, I haven't.

19 Q Okay. The choice that one exercises to
20 purchase cigarettes or not, if one is addicted in the
21 marketplace is a different type of choice than one
22 might exercise for, say, a pair of socks, would you
23 agree?

24 A Well, I think smoking cigarettes is a
25 dangerous proposition. So in that regard, it is quite

1 different than buying a pair of socks.

2 Q Do you think it is different in any other
3 way?

4 A I think that's the main reason it's
5 different is you are making a choice to choose a
6 dangerous product.

7 Q All right. And do you think that because
8 the product is addictive or can be habit forming in
9 your words or whatever words you want to use,
10 dependence producing, alters the marketplace and the
11 choice that people make?

12 A I think people are free to choose to smoke
13 cigarettes and free to choose to quit. And I think if
14 they want to quit smoking cigarettes, I believe that
15 people can do it.

16 Q To pay for your company's contribution to
17 the Master Settlement Agreement, you have told this
18 jury, I believe, candidly so, that your company
19 increased the price of its product to pay for the next
20 year or two payments under the Master Settlement
21 Agreement, correct?

22 A That's correct.

23 Q They did that with the knowledge that the
24 people that buy their product may be addicted,
25 probably are addicted and don't have a choice, didn't

1 they?

2 MR. DUMAS: Objection, argumentative,
3 Your Honor.

4 THE COURT: I'll allow the question.
5 Go ahead and answer if you can, please.

6 THE WITNESS: I think that we raised the
7 prices as we have raised prices before because
8 adults in this country continue to choose to smoke
9 cigarettes and we hope they will choose our brands
10 if they do choose to smoke.

11 BY MR. WOBBEROCK:

12 Q The key word there is "choose," isn't it?

13 A Yes, it is.

14 Q If you're addicted, that is going -- in
15 the words of that document, 206, is going to alter
16 that whole equation, isn't it?

17 A Well, I am giving you my opinion. I am
18 not a scientist, Mr. Wobberock.

19 Q Do you know of any other product other
20 than pharmaceuticals needed to sustain life where the
21 price can go up and people still have to have it like
22 they do with cigarettes?

23 MR. DUMAS: Objection, argumentative.

24 THE WITNESS: I don't know, Mr. Wobberock.

25 I don't know the answer to your question.

1 THE COURT: She said he she doesn't know.
2 The answer will stand.

3 BY MR. WOBBROCK:

4 Q I believe you testified that you wanted
5 to -- your company or your president wanted your
6 company to become responsible and respected, correct?

7 A The most responsible and the most
8 respected.

9 Q The most responsible and the most
10 respected -- sorry. And you thought -- I think I have
11 this right -- that perhaps they weren't in part
12 because people didn't like your product. Do I have
13 that right? Some people don't like your product.

14 A I think I probably said something like,
15 you know, I think smoking in this country is not a
16 real popular thing, so it is quite difficult to be
17 respected.

18 Q Do you think it also might be that people
19 feel that you play word games, that you have not been
20 forthcoming, that you have given people half-truths?
21 Do you think that might have anything to do with the
22 fact that you are not respected, your company?

23 A I don't know how -- how that is. Perhaps
24 society does feel that, but I think we have been
25 truthful in trying to do the right thing in marketing

1 this product.

2 Q Well, you would agree that you should not
3 give misconceptions, misrepresentations, false hopes,
4 and incorrect statements about your products. You
5 would agree with that, wouldn't you?

6 A I would agree with that, yes.

7 Q And if your product doesn't actually
8 deliver what you have said it would, that would be
9 something that you should be held accountable for,
10 should you not?

11 A I don't know what you mean by "deliver
12 what it says it should." What we say should be
13 truthful.

14 A So low-tar cigarettes should deliver low
15 tar, not just to a machine, but to people. Would you
16 agree?

17 A I think that low-tar cigarettes are
18 intended to deliver -- let me rephrase it. I think
19 that low-tar cigarettes are a category of cigarettes
20 that are different from full flavor cigarettes. And
21 that description is simply meant to distinguish that
22 this group of cigarettes is different than this group
23 of cigarettes. And the only measure we have is the
24 FTC method.

25 Q That no one requires, no law requires that

1 if the cigarette does not deliver low tar that you
2 have to use the term low tar?

3 A We are not required to use the term low
4 tar.

5 Q That is your choice?

6 A It is our choice.

7 Q Well, let me ask you if you agree with
8 this statement. "The cigarette industry has not
9 voluntarily" --

10 MR. DUMAS: I am sorry, Mr. Wobbrock. I
11 apologize.

12 It appears to me that Mr. Wobbrock is
13 reading from a document not in evidence and I would
14 object.

15 THE COURT: Counsel?

16 MR. WOBBROCK: Your Honor, this was
17 qualified as an authoritative work by two doctors,
18 Dr. Benowitz and Dr. Burns. It is the NCI 13
19 report, and I am going to read selected portions of
20 it for impeachment consist were Oregon Evidence Code
21 706. It has already been qualified by those two
22 experts, and is an authoritative work.

23 MR. DUMAS: 706 allows him to read and
24 impeach with a scientific treatise if the witness
25 is, in fact, a scientific expert. This witness is

1 not, Your Honor, and he knows that.

2 MR. WOBBEROCK: Your Honor, this is from
3 the chapter entitled, "Marketing cigarettes with low
4 machine measured yields by Dr. Pollay and
5 Mr. Duehurst (ph)." This is a marketing chapter.
6 The editors of this work --

7 THE COURT: Let's have the jury step out
8 and let's discuss this issue a little bit.

9 (The following proceedings were held in
10 open court, out of the presence of the jury:)

11 THE COURT: Mr. Wobbrock, what the Court's
12 concern is right now, we have established that this
13 witness is a lay witness. Yesterday we spent quite
14 a bit of time talking about that. And I think there
15 is a distinction on how you cross-examine a lay
16 witness and how you cross-examine an expert witness.

17 Certainly, an expert witness can be
18 cross-examined with a learned treatise, but she is
19 not an expert witness, so that is what my concern
20 is. She has information about marketing and so
21 forth and so on, but she hasn't been qualified as a
22 marketing expert.

23 If she had, then it appears what you are
24 doing is appropriate, but just because she is a
25 marketer and she's a vice president in marketing

1 doesn't mean she is familiar with all of the learned
2 treatises that have been written about marketing.

3 Go ahead, your response. I am just
4 letting you know what the Court's concern is.

5 MR. WOBBROCK: Judge, the impeachment
6 rules under 706 don't require that the witness be
7 familiar with the work. All it requires is that the
8 work, the portion be read to the witness, and ask
9 the witness whether they agree with it or not. The
10 fact that it may be qualified as authoritative and
11 goes to its weight and the questions I'm about to
12 ask this witness I think are well within the Court's
13 ruling.

14 Because the Court ruled that she could
15 express, I thought I heard you say that she could
16 express expert opinions about what was going on when
17 she was there if it was within her knowledge base,
18 if it was what she was doing. And the parts I'm
19 going to read to her have to do with the marketing
20 of low-tar cigarettes, things that she has
21 experienced right when she is there.

22 They are questions about the current state
23 of affairs. Not before she got there, not at a time
24 when she wasn't in the company.

25 THE COURT: All right. The things that

1 bother me, Rule 706 specifically states, impeachment
2 of expert witness by learned treatise. She is not
3 an expert witness. Although, I think what I was
4 saying when I was reading the Lerch case, which said
5 in certain situations a lay witness can testify to
6 the same thing that an expert witness testifies to,
7 but that doesn't change their character as an expert
8 witness.

9 They were talking about this guy, this
10 fisher guy who owned the fishes and had worked --
11 had been in Vietnam for 13 months and so forth, his
12 testimony, and the testimony of a detective as
13 opposed to Dr. Brady who was a pathologist. They
14 testified to the very same thing, but one is an
15 expert witness and you can use different procedures
16 for that person, but you can't use that same
17 procedure with the lay witness.

18 And I think 706 doesn't apply to a lay
19 witness at all, counsel. I think it is only
20 applicable to an expert witness.

21 MR. WOBBROCK: I agree, Your Honor. I
22 think the issue that I'm trying to persuade the
23 Court of is that I thought the Court earlier had
24 ruled that those areas in which she actually did her
25 work, she could give the lay witness testimony.

1 Where you cut defendants off was when they were
2 asked questions about, "Well, reviewing these things
3 of 1975 and before, do you have an opinion about
4 what they mean now and then."

5 And you said, "No, can't do that." But
6 after 1985, when she started working there, you
7 said -- looking at the documents, "Were you able to
8 see anything in there, for example, that indicated
9 that they were marketing to kids?" And she said,
10 "No." That kind of view of things, whether it be
11 fact or opinion, I guess it gets kind of close.

12 THE COURT: Right. She could give a lay
13 opinion as to factual situations, but she still
14 couldn't give an expert opinion on anything. That
15 was the Court's ruling, but she could still give a
16 lay opinion on those things that are within her
17 expertise and knowledge when she was working there.
18 I think you're going to lose this one, counsel.

19 MR. WOBBROCK: All right. Your Honor, I
20 have heard the Court.

21 THE COURT: All right. Bring the jury,
22 please.

23 MR. PHILLIPS: We're going to take that as
24 a lesson for the future. If I am silent,
25 Your Honor, it means I know you're going my way.

1 THE COURT: You've been up quite a bit,
2 Mr. Phillips, so I must not have been going your way
3 enough.

4 All right. Bring the jury, please.

5 (The following proceedings were held in
6 open court, the jury being present at 2:27 p.m.:)

7 THE COURT: Counsel, you may proceed with
8 your cross-examination.

9 MR. WOBBROCK: Thank you, Your Honor.

10 BY MR. WOBBROCK:

11 Q Would you agree, Ms. Lund, there were
12 times when your company used associative imagery to
13 try and sell its products?

14 A I don't --

15 Q Do you know what that means?

16 A I don't know what that means.

17 Q Do you ever hear the term -- and we got
18 this from a marketing and advertising expert,
19 "associate imagery," meaning associating certain
20 images with the product to help sell the product?

21 A Except I don't use that term, so --

22 Q Do you have a term that means the same
23 thing?

24 A I still don't know what it means. Maybe
25 if you give me an example or something.

1 Q Let me see if I can give you an example.
2 I will give it to counsel first before I show it to
3 you. I'll show it to you now and then I will show it
4 to the jury as soon as I hear from counsel.

5 MR. DUMAS: No objection, Your Honor.

6 THE COURT: All right. Proceed, counsel.

7 BY MR. WOBBROCK:

8 Q Can you take a moment and look at that.
9 I'd like to direct your attention to the second page.

10 MR. DUMAS: The witness can look at the
11 entire document.

12 MR. WOBBROCK: Sure. I am just directing
13 her attention to the second page.

14 MR. DUMAS: And I will just direct her
15 attention, that she can look at the entire document.

16 THE COURT: Both counsel are correct.

17 MR. DUMAS: That's a first, Your Honor.

18 THE WITNESS: Okay. Mr. Wobbrock, I think
19 I have the gist of what the document is.

20 BY MR. WOBBROCK:

21 Q You see here on the second page, it says,
22 "Opportunity: This series of circumstances may never
23 present itself again. Merit will be seeding new
24 imagery which includes adventurous sailing photos
25 similar to 12-meter racing."

1 Do you see that?

2 A I see that.

3 Q That is an example of what I was trying to
4 express to you. We've been taught in this courtroom
5 by a marketing expert and by an advertising expert
6 associative imagery. Do you understand what I'm
7 referring to now?

8 A Well, if you're asking me does it mean
9 associating sailing with Merit is associative imagery;
10 is that what you're asking me?

11 Q Right. That's the question I'm asking
12 you.

13 A I agree with you.

14 Q Okay. Good. That is a technique that
15 Philip Morris employed in the past, is it not?

16 A Well, we do use images with our
17 advertisements; and, in fact, we used sailing images
18 with the Merit brand.

19 Q And the imagery here that is talked about
20 is the use of Merit cigarettes with American Cup
21 challenge race, 1985?

22 A It was a proposal.

23 Q Right. Okay. I just want to establish
24 that. That's the kind of thing that your company has
25 done from time to time?

1 A Yeah, well, we didn't do this.
2 Q Well, maybe you didn't, but you talked
3 about it?
4 A Yes.
5 Q All right. One of the things that you now
6 say your company is trying to do is to avoid marketing
7 to minors, correct?
8 A Well, I think we have always tried to
9 avoid marketing to minors.
10 Q You didn't want to give them the image
11 of -- well, put it this way. You wouldn't want to
12 market in a place that they might be or they might
13 see, a place frequented by people under the age of 21
14 or 18?
15 A Well, we try to restrict our marketing, as
16 I said, our advertising and our promotions as best we
17 could to an adult marketplace.
18 Q And so the answer to my question would be
19 yes. You try to stay out of those venues, those
20 advertising areas, those kinds of things which would
21 appeal to people under the age of 21 or 18?
22 A Well, 21 or 18, yes.
23 Q Depending on the state, is that it?
24 A Well, depending on what the event was, and
25 so forth and so on. Cigarettes are sold at retail, so

1 I don't know if it would include retail.

2 Q Let's see if we can come up with an
3 example then. Would you want to keep your advertising
4 off of MTV?

5 A Yes, we wouldn't want to have our ads on
6 MTV.

7 Q And you wouldn't want to give an MTV-type
8 image to people?

9 A I don't think we have an MTV image for any
10 of our brands, and I think MTV image would be too
11 young.

12 Q I am going to ask you if you are familiar
13 with that document? Having looked at the first few
14 pages, look familiar?

15 A You know, it looks like a speech or
16 something.

17 Q That you gave?

18 A It is a speech that I gave?

19 Q According to the Philip Morris database.

20 A May I just look through it just a little
21 bit more?

22 Q Sure, uh-huh.

23 (Pause in proceedings.)

24 THE WITNESS: Well, I guess I don't know
25 how much I should read every word of this. It is

1 possible that I made a speech like this, yeah.

2 BY MR. WOBBROCK:

3 Q Okay. The -- have you ever taken a look
4 at the Philip Morris Web site that has the litigation
5 documents? Have you ever done that?

6 A Actually, I have not gone in to look at
7 the Web site, but I will accept that it is altogether
8 possible that I could have made this speech.

9 Q All right. Let me ask you to direct your
10 attention to the first page.

11 A Okay.

12 Q This document, according to the -- what's
13 called the data sheet that comes from the Web site
14 that is required by the Master Settlement Agreement,
15 indicates that it is authored in 1992, and it's
16 authored by you. I'll make that representation to
17 you.

18 A Okay.

19 Q It basically says that the subject here
20 is -- I don't want to put words in your mouth, since
21 it looks from the data sheet that you wrote it. "The
22 current business situation led us to conduct a massive
23 examination of the young adult male audience and our
24 advertising."

25 And from that topic sentence, we can see

1 that is probably what this paper is about, would you
2 agree?

3 A Well, that is probably part of what the
4 paper is about.

5 Q Right. I don't mean exclusive to
6 everything else. If we bring your attention to, the
7 pages are only numbered down there with the computer
8 line on the bottom left hand, you see that?

9 A Yes.

10 Q I bring your attention then to Page 13.
11 Do you see that?

12 A I am going to get there.

13 Q Again, this is 1992, according to the data
14 sheet?

15 A Okay.

16 Q And it talks about, we're just going to go
17 through this quickly if we can. I am not going to get
18 into great detail, but if you feel like you need to
19 elucidate, after you answer my question, I think the
20 rules permit you to do that.

21 "The next five campaigns were more
22 successful, updating the Marlboro image. The first
23 New Breed," that's the name of the campaign, correct?

24 A That's what I must have called it or
25 somebody called it that.

1 Q I am just trying to get into the
2 advertising world, the marketing world. When you have
3 an advertising campaign, you give them names. Like we
4 saw the Benson & Hedges, "Too Long Cigarette" or
5 whatever they called it.

6 A "Oh, the Disadvantages."

7 Q Okay. So these are the different names of
8 these campaigns?

9 A That's fair.

10 Q So this is the "New Breed" campaign, and
11 it describes a young adult, cool, hip fellow, et
12 cetera.

13 And the next one is called, "The Shades"
14 campaign, correct?

15 A I see that, yes.

16 Q And "The Reflections" is a similar
17 campaign, a variation for that. And, "The Cowboy and
18 the Man," that is another campaign. And the last one
19 says, "'Across the Line,' seems to come closest to
20 fulfilling the brief."

21 The brief meaning your charge or kind of a
22 legal term, your goal, correct?

23 A I guess what we were asking for.

24 Q Right. What you were -- what your goal
25 was, what you were trying to do?

1 A Uh-huh.

2 Q And then it says on the next page up at
3 the top, "We think the appeal of this last campaign
4 lies in its ability to combine fantasy with reality
5 and that this juxtaposition has always been a key to
6 Marlboro's success that presents the Marlboro man in a
7 way that young adults easily relate to. It is MTV in
8 print and yet it doesn't walk away from our equity."

9 Is that what you wrote?

10 A I wrote it, but I didn't run it.

11 Q The time you wrote it, you thought MTV in
12 print wasn't a bad idea?

13 A No. I think what I wrote and what I
14 meant, if I may, is that young adults seem to relate
15 and specifically young adult smokers, so these were
16 adult smokers looking at this campaign and they could
17 relate to it and the way I phrased it was, MTV in
18 print, and we didn't run it.

19 Q These sorts of documents that formerly
20 were confidential and many the jury has seen have had
21 stamped confidential all over them. They said, "Take
22 this from the file room, bring it back, don't copy
23 it," that sort of thing.

24 Are you familiar with those kinds of
25 documents within your company?

1 A Don't produce the documents?

2 Q "Don't reproduce the document. Don't copy
3 it. Put it back in the library. Don't make any
4 notes," anything like that. We have seen little
5 caption on some of the documents that we have looked
6 at in this case. Are you familiar with that?

7 A Well, I am familiar that if we have a
8 highly confidential trade secret document that we
9 don't make copies of it.

10 Q And are you familiar -- well, you've
11 already indicated that you are not familiar with a lot
12 of the documents that have to do with things like
13 smoking compensation, correct?

14 A Yes.

15 Q And whether those have been stamped
16 confidential and what should be done with those. You
17 are not familiar with them?

18 A I am not.

19 Q Are you familiar with this, in the process
20 of the Master Settlement Agreement, requiring your
21 company to put the documents, what I have referred to
22 in this litigation, as recently revealed documents to
23 make them public, that your company fought that
24 release all the way to the U.S. Supreme Court?

25 A I don't know if we did or we didn't.

1 Q You don't know about that. One of the
2 things that you have been involved in through part of
3 your career was the Marlboro brand management,
4 correct?
5 A That's correct.
6 Q And one of your accomplishments in which
7 you were even interviewed by Fortune magazine was the
8 Marlboro Medium promotion, correct?
9 A Marlboro Medium line extension.
10 Q This is probably not correct, but you sort
11 of invented the marketing for the new cigarette
12 Marlboro Medium, correct?
13 A Well, I don't know if I invented the
14 marketing, but I invented the cigarette.
15 Q And you spent \$60 million on its launch?
16 A I believe that would be about right.
17 Q And one of the reasons you felt you were
18 able to do that is you felt that there was developing
19 or had developed a separate niche for such a product,
20 correct?
21 A I wasn't sure there was a niche for the
22 product, but I thought there would be smokers who
23 would be interested in the product.
24 Q And one of the things that you are
25 interested in that regard is that you didn't want to

1 take away smokers from what is considered a very
2 valuable product to your corporation, the Marlboro
3 brand, correct?

4 A Oh, no. I knew that there would be some
5 smokers from the Marlboro man -- from the Marlboro
6 brand that would choose Marlboro Medium.

7 Q I am going to ask you to look at another
8 document. This last document -- well, there are two
9 here. We're two behind. Would be 21 -- would be
10 excuse me -- 20.

11 MR. DUMAS: What was that last one?

12 MR. WOBBROCK: We're working on that.

13 MR. DUMAS: You're working on that?

14 MR. WOBBROCK: 2025 and -- you've already
15 got 2024 -- 2024 and 2025, counsel. So this one
16 would be 2026.

17 MR. DUMAS: What was the last one?

18 MR. WOBBROCK: 2025.

19 2026, Ms. Murphy; is that right?

20 THE CLERK: Uh-huh.

21 THE WITNESS: Mr. Wobbrock, am I looking
22 to answer a question right here?

23 BY MR. WOBBROCK:

24 Q I am just asking you if you are familiar
25 with the document. That is the question.

1 A I don't remember, but it sure looks like
2 something -- it looks like a speech or a presentation.
3 Q Yes. It is a presentation that you made.
4 A And it looks like there is a second one on
5 here, too.
6 Q Right. And I ask that you take a look at
7 that, too.
8 A Should I read each one of them?
9 Q Well, I am going to ask you some questions
10 and I'll direct your attention, but the first simple
11 question is: Are you familiar with these documents?
12 A I don't remember them; but, you know, it
13 looks like they're mine.
14 Q Okay. So let me, just before I forget to
15 do this, put a sticker on this one and we'll see about
16 the other one. So this document is probably a
17 Powerpoint presentation on a computer that you gave at
18 a business meeting, correct?
19 A Well, it I don't know that it was a
20 Powerpoint presentation, but it was at some kind of a
21 meeting.
22 Q These little images were probably
23 projected on a screen?
24 A Yeah, I think so.
25 Q Okay. As we look at this document, we can

1 see that at that time -- and this was in 1990 -- that
2 Marlboro had a 25-percent market share, correct?

3 MR. DUMAS: Your Honor, excuse me.

4 And I apologize, counsel.

5 This is all fine, Your Honor, but this
6 case is about Merits. This witness didn't talk
7 about Marlboro market share. I don't really know
8 what the relevance of this is to this lawsuit.

9 THE COURT: Counsel, do you plan to tie
10 this up.

11 MR. WOBBROCK: Yes, I do, Your Honor. I
12 think we can tie it up very easily.

13 THE COURT: Proceed.

14 BY MR. WOBBROCK:

15 Q Marlboro has a 25-percent market share; is
16 that correct?

17 A It said in 1990, Marlboro had a 25-percent
18 market share.

19 Q Is that about the same as it is now?

20 A No. Marlboro has a bigger market share.

21 Q Bigger market share. It's grown since
22 then. Okay. And it says the next page at the top,
23 "Any tinkering with Marlboro that does not pan out and
24 results in even a one-percent decline in its reported
25 value translates to a loss of \$300 million." Is that

1 correct?

2 A Well, I don't remember at that time, but I
3 hope that if I wrote it, it was correct.

4 Q Okay. So that means if one percent of the
5 market is 300 million, then 100 percent of the market
6 is what, three billion?

7 A I am not sure I can do the math.

8 Q Well, anyway, we'll let the jury do the
9 math. One percent equals 300 million anyway. And you
10 say, "For far less of an offense, individual careers
11 have taken abrupt turns." Correct?

12 A That's what I wrote.

13 Q Right. And what you really mean is that
14 if you make a mistake and it causes a one-percent loss
15 in business heads might roll?

16 A I am sure that's what I meant when I wrote
17 it.

18 Q In other words, somebody's career could be
19 on the line for a one-percent mistake, correct?

20 A That's what I wrote in this speech.

21 Q In other words, what you're saying is it
22 is hard to justify messing with a good thing?

23 A I think probably what I was doing was
24 tongue in cheek.

25 Q But you would agree it is hard to justify

1 taking a risk unless you know that you have a pretty
2 good chance of that risk panning out?

3 A Well, I think that when you take a risk
4 you have a sense that you're going to be successful, but
5 sometimes you fail, which I have.

6 Q But you are proud of the work that you did
7 with Marlboro Medium, are you not?

8 A I think it was pretty good. I don't think
9 it was great. Ten years later, I don't think it was
10 great.

11 Q Here's the point of all this, because I
12 promised the judge I would bring it back home, and I'm
13 going to. Any time you consider marketing any
14 alternative product, whether it be a Marlboro Medium
15 or a Merit or a Merit De-Nic or a Cambridge in which
16 you would put nicotine into the filter and flavors and
17 keep people protected away from carcinogenic
18 substances, any time you would make any such a move,
19 people in your corporation would be conscious of the
20 fact that you might be cutting into Marlboro sales.
21 And if you cut in as little as one percent, it could
22 cost your company \$300 million; isn't that true?

23 A Well, if one of our other products cut
24 into Marlboro's market share and took the market
25 share, then we wouldn't lose anything.

1 Q If it cut people away? For example, if
2 they got into a De-Nic cigarette and they were able to
3 wean themselves away from smoking, you would lose that
4 business, wouldn't you?

5 A Well, if people quit smoking, then we
6 would lose that business, sure.

7 Q If you started a trend toward ultra
8 low-tar and people began to go to ultra low-tar
9 cigarettes and they began to like those cigarettes and
10 really started a rush toward the successful health
11 cigarette, the Marlboro franchise could be destroyed,
12 couldn't it?

13 A Well, not necessarily.

14 Q It could be cannibalized, couldn't it?

15 A Well, cannibalized simply means they
16 switch from one to another.

17 Q Wouldn't it be fair to say that you didn't
18 want to encourage people to go to ultra low-tar
19 cigarettes because it would take away from Marlboro
20 sales?

21 A Well, Mr. Wobbrock, people were switching
22 to Merit Ultra Lights as I've talked about and I
23 encouraged people to switch to Merit Ultra Lights.
24 For example, I launched Marlboro Ultra Lights.

25 Q Let me see if you remember what you wrote

1 here on March 14th, 1990. And what will be marked as
2 2026, I believe. March 14th, 1990. Do you see this
3 memo?

4 A I see it, yes.

5 MR. DUMAS: We already have a 2026.

6 MR. WOBBROCK: 2027, I'm sorry.

7 MR. DUMAS: What page is that, counsel?

8 MR. WOBBROCK: They're not numbered. It
9 is the one with the confidential and Bates No. 13
10 and the next page is 14.

11 MR. DUMAS: Thank you.

12 BY MR. WOBBROCK:

13 Q "Maintaining a strong upward share trend
14 for Marlboro Ultra Lights would require Marlboro to --
15 ultra low-tar smoking in a highly visible manner,
16 although Marlboro has the resources to do this, the
17 ramification to its vital Lights business" -- meaning
18 Marlboro Lights, correct?

19 A I think so, yes.

20 Q -- "would be disastrous. In order to
21 protect its core business, it is imperative that
22 Marlboro not be the catalyst which initiates an
23 industry wide ultra low-tar share explosion."

24 Did you write that?

25 A No, I didn't write that.

1 Q You didn't write it?

2 A No, I didn't. Mr. Camisa (ph) wrote that.

3 Q To you?

4 A Yes.

5 Q Did you agree with that?

6 A I don't really agree with that. And that
7 certainly hasn't happened since we launched Marlboro
8 Ultra Lights.

9 Q And Mr. Camisa, did he work for you?

10 A Yes, he did.

11 Q These magazines that you no longer
12 advertise in. Since I had a black-and-white copy, it
13 doesn't show too well by circling. Are these
14 magazines, is it fair to say, that you used to
15 advertise in?

16 A I think that's fair to say. I am not
17 positive on every one, but most of the magazines.

18 Q There are 30 magazines there and I circled
19 the ones that appear to have an appeal toward the
20 people 18 and younger. Would you look at the circles
21 the see if you agree with me?

22 A Well, I don't know if these magazines have
23 an appeal, specific appeal to people 18 and younger.
24 What I told you is there is data which suggests that
25 more than 15 percent of the readers of these magazines

1 were under the age of 18.

2 Q More than 15 percent?

3 A More than 15 percent or over two million.
4 That's what the data says. Those people might read
5 these magazines.

6 Q And when we look at magazines like Rolling
7 Stone and Sports Illustrated and Spin and Elle and Hot
8 Rod and Vibe, can we say that those magazines probably
9 had more than 15 percent as children or young adults
10 as readers before the age of 18.

11 A All of these magazines have higher than 15
12 percent.

13 Q Can we say --

14 A What the study is, it is a readership
15 study and the readership study asks people questions
16 about whether they are familiar with these magazines
17 and if someone says, "Yes, I'm familiar," then they
18 are considered to be a reader of that magazine.
19 That's how the data worked.

20 Q Okay. The point I was trying to get at,
21 and I didn't mean to interrupt you, I'm am sorry, some
22 of those certainly have much more than 15 percent of
23 readership of people 18 and younger, wouldn't you
24 agree?

25 A They all do.

1 Q Much more than 15?

2 A I don't know what much more is, and I
3 don't recall what the highest number is, that's why we
4 have taken these books off the list. I don't know how
5 much more. I don't remember the numbers.

6 THE COURT: Counsel, are you getting ready
7 to go into a new area? Why don't we stop here.

8 MR. WOBBROCK: Sure. Your Honor.

9 THE COURT: Let's have our afternoon
10 break. Court is out of session. And the witness
11 may step down if she would like to.

12 THE WITNESS: Thank you.

13 (Court adjourned, Volume 38-B at 3:00 p.m.)

14 * * * * *

15 (Court Reporter Estelle Keating reported
16 Volume 38-C.)

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REPORTER'S CERTIFICATE

I, Katie Bradford, Official Reporter of the Circuit Court of the State of Oregon, Fourth Judicial District, certify that I reported in stenotype the oral proceedings had upon the hearing of the above-entitled cause before the HONORABLE ROOSEVELT ROBINSON, Circuit Judge, on March 5, 2002;

That I have subsequently caused my stenotype notes, so taken, to be reduced to computer-aided transcription under my direction; and that the foregoing transcript, Volume 38-B, Pages 1 through 104, both inclusive, constitutes a full, true and accurate record of said proceedings, so reported by me in stenotype as aforesaid.

A transcript without an original signature and red CSR seal is not certified.

Witness my hand and CSR Seal at Portland, Oregon, this 23rd day of August, 2002.

Katie Bradford, CSR 90-0148
Official Court Reporter

